

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

ST. CHARLES PROFESSIONAL FIRE)
FIGHTERS, LOCAL 1921, INTERNATIONAL)
ASSOCIATION OF FIRE FIGHTERS,)

Petitioner,)

v.)

CITY OF ST. CHARLES, MISSOURI,)
a municipal corporation)

Respondent.)

Public Case No. 79-024

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon St. Charles Professional Fire Fighters, Local 1921, International Association of Fire Fighters, filing a petition for certification as public employee representative for all captains and fire fighters employed by the St. Charles Fire Department of St. Charles, Missouri. The City has objected to the inclusion of the captains in the appropriate unit because they are supervisory personnel who lack a community of interest with the fire fighters. On July 30, 1979, a hearing was called to order in this case at the St. Louis County Courthouse in Clayton, Missouri. The case was heard by a panel of three members from the Board which was made up of one employee member, one employer member and the Chairman. Both petitioner and respondent in this case were represented by counsel. The statutory authority required for the State Board of Mediation to render a decision with respect to issues relating to appropriateness of bargaining units is found in Section 105.525 RSMo. 1969.

The term "appropriate unit" is defined in Section 105.500 RSMo. 1969, as

"a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned;"

The Board, after a careful review of the evidence, including a consideration of the demeanor and interests of the witnesses, sets forth the following findings of fact:

FINDINGS OF FACT

The St. Charles Fire Department employs approximately sixty-five persons consisting of the fire chief, three assistant chiefs, twelve captains and approximately fifty fire fighters. The department has four separate engine houses, the main headquarters being Engine House One. The assistant chiefs, captains and fire fighters work in three rotating, twenty-four hour shifts. Each person is assigned to work in either Shift A, B or C. Under normal working conditions each shift is organized similarly, headed by an assistant chief who has overall responsibility for the shift. The assistant chief spends the bulk of his time at Engine House One. Besides the assistant chief, Engine House One has one captain and four to five fire fighters. Engine Houses Two, Three and Four are usually manned by one captain and two fire fighters. The activities of the Fire Department employees may be divided into four categories: fire fighting, training, housekeeping duties and administrative duties.

The department's fire fighting activities are of two general types: the relatively minor fires such as trash, brush, or automobile fires, and the more serious structural fires that involve residences or businesses. The small non-structural fires are normally extinguished by a captain and two to three fire fighters working together as a team without the supervision of a chief-- that is, the fire chief or an assistant chief. At all structural fires, however, a chief is present and in command. If a captain arrives first at a structural fire, he is in charge until the chief arrives. The captain's supervisory duties

in such cases include deciding what equipment to use in attacking the fire and whether or not additional manpower is needed. In most cases the fire fighters present are experienced and know what is to be done without specific orders from the captain. Often there is little time for the fire fighters to wait for such specific orders. The captain, after deciding what equipment to use, works along side the fire fighters, handling the firehose or doing whatever has to be done. Upon arrival the assistant chief takes command and directs the captain and fire fighters.

Besides their fire fighting activities, department personnel are also involved in continuous educational training programs. A departmental memorandum outlining the officer's responsibility states that "captains are to be held strictly responsible for the training and performance of their subordinates." Although this language could be interpreted to mean that captains exercise much authority concerning training, the captains, in everyday practice, have little discretion as to such training matters. The schedule of training is predetermined by the assistant chiefs and must be strictly adhered to by the captains. The captains' involvement in training matters consists of giving instructions to the fire fighters concerning the training and observing their performance.

As could be expected, there are general housekeeping duties that must be performed to maintain the engine houses in a clean and orderly condition. These duties are custodial in nature and require little supervision. The chief or assistant chief draws up a list of chores that must be completed. The list is posted in each engine house and the fire fighters decide for themselves which person will do a particular job. Although captains are responsible for seeing that the work is satisfactorily completed, department policy requires that they help with such chores the same as the fire fighters.

There are many administrative matters that arise within the department. With respect to hiring, the record is not clear as to how fire fighters are employed by the department. It is clear, however, that the captains have no influence in the hiring process. Fire Chief Underwood stated that captains have no way of knowing in advance who is being considered for employment. Similarly, captains have little input as to the promotion of fire fighters. Such promotions are made according to established city procedures. An aspiring fire fighter must apply for the promotion and take a written exam. He is then interviewed by the St. Charles Police Fire Personnel Board, a body composed entirely of citizens, which makes its recommendations to the mayor who has the final authority to make the promotion.

Should a fire fighter want time-off for a day or for a few hours, he must fill out a slip and give it to his captain. The captain either approves or disapproves the request by checking the appropriate box on the slip. He then gives the slip to the assistant chief who must make the final decision. Similarly, a captain has no authority to allow fire fighters to trade shifts on a temporary basis or to authorize a permanent transfer to another shift. Normally such transfers are ordered without the captains being consulted beforehand. They are merely told of the transfer after the decision has been made.

The department must also deal with discipline problems. There are a number of rules and regulations that must be followed by all members of the department. The rules are published in booklet form and are available to all employees. The captain's authority to discipline fire fighters is generally limited to verbal reprimands. In most cases a captain will merely inform the fire fighter that his work is unsatisfactory or that he has committed a rule infraction and the fire fighters will improve his performance accordingly. If the verbal reprimand is not heeded, the captain will call the assistant chief. The captain's main responsibility in such matters is to report major violations of

these rules to the assistant chief. In short, discipline problems of any significance are dealt with by an assistant chief or the chief.

Another administrative duty of the fire department is the periodic evaluation of its employees. These evaluations are administered by the assistant chiefs and captains and are conducted on forms provided by the city. The evaluations are intended to help the employees improve their performance as public employees. A captain is evaluated by an assistant chief every six months. The evaluation consists of a six page form which allows the assistant chief to assign a numerical rating to the captain's ability as a worker and leader. After the form is completed, it is shown to the captain being evaluated and then reviewed by the chief who places the evaluation on file for subsequent reference.

Captains are responsible for evaluating fire fighters. They evaluate probationary fire fighters--that is, recently hired fire fighters that have not been given full fire fighter status. The captains conduct the evaluations every two months by filling out a short performance-efficiency report. As to the regular fire fighters, a captain must complete a one page evaluation report every six months. This report is signed by the fire fighter and then reviewed by an assistant chief. If the assistant chief approves the evaluation the report will be sent to the chief.

Another administrative matter of the department is the formation of departmental policy. The department holds monthly meetings at which the chief, the assistant chiefs and the captains are present. At these meetings there is a general discussion of policies and procedures that will be implemented within the department. All present at such meetings may make recommendations as to policy changes that might be helpful to the department. However, there is no discussion of personnel matters. The fire fighters may make policy recommendations by informing his captain who will present the

recommendations at the meeting. A few days after the meeting, the captains must read the minutes to the fire fighters to keep them abreast of the policy discussions. Although these meetings serve as a medium through which the captains and fire fighters can make suggestions concerning department policies, the record shows that final decision concerning policy and personnel matters are made at other meetings at which only the chief and assistant chiefs are present.

CONCLUSIONS OF LAW

In its brief the City argues that Local 1921's petition should be dismissed on procedural grounds. In so arguing the City cites 80 CSR 40-2.303 which sets forth the requirements for a petition for union certification. Subsection 1(I) of that rule requires, inter alia, that a petition for certification of a public employee representative must be accompanied by a showing of interest of not less than 30% of the employees in the unit seeking certification. The City contends that because no evidence of the petitioner's showing of interest was introduced at the hearing, the requirements set forth in 80 CSR 40-2.030 were not met. Moreover, the City argues that because such evidence was not introduced, the City was deprived of its legal right to examine the validity of the petitioner's showing of interest. Therefore, reasons the City, the petition should be dismissed. A careful reading of the applicable rules, however, clearly indicates that the City's argument is without foundation. The rule in question sets forth the requirements for a petition for certification. The requirements set forth have no bearing as to what is to be presented at the hearing, but instead establish the requirements for a certification petition. The chairman reviews the petition and determines the validity of the petitioner's showing of interest, and, if found valid, orders a hearing. As provided in 80 CSR 40-2.070, the Chairman's determination as to the validity of the showing of interest is not subject to collateral attack at the hearing. Further, 80 CSR 40-2.070 expressly provides that the showing of interest documentation shall not be furnished to parties.

Consequently, we must conclude that the City has no right to examine the showing of interest documentation and that the petitioner was not required to enter said documentation into evidence at the hearing.

As mentioned above, the petitioner seeks to include in an appropriate bargaining unit all captains and fire fighters of the St. Charles Fire Department. Because the inclusion of the fire fighters has been stipulated to by the parties, the sole issue left for determination is whether the captains should be included in the appropriate bargaining unit. Petitioner argues that the captains have a community of interest with the fire fighters, and therefore, should be included in a single bargaining unit. The City, however, contends that the captains are supervisory employees that should be excluded. This Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. St. Louis Fire Fighters Association, Local 73, IAFF, AFL-CIO v. City of St. Louis, Missouri, Public Case No. 76-013 Amalgamated Transit Union v. Bi-State Development Agency, Public Case No. 78-004. Consequently, in order to determine the appropriate unit we must decide whether the St. Charles Fire Department captains are supervisors. In Western Missouri Public Employees, Local 1812 and Missouri State Council 72, AFSCME v. Jackson County, Missouri, Public Case No. 90, this Board set forth the factors which are considered in determining whether an employee is a supervisor. Each factor and its application to the present case will be dealt with separately in the following paragraphs.

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees. It is clear that captains have no authority to effectively recommend the hiring of new employees. Although one captain testified that he made recommendations in the past concerning hiring, no such recommendation has ever been followed. Further, testimony of the fire chief clearly supports our conclusion that the captains play no role in the hiring process. Similarly, captains have little input as to the transferring of fire fighters to other shifts or to other engine houses. Captains

occasionally recommend that fire fighters be transferred; however, the final decision must be made by a chief. In most cases captains are merely told that a fire fighter will be transferred. In summary, the record shows that a captain may occasionally recommend that an individual be hired or that a fire fighter be transferred. There is, however, no formalized procedure for such recommendations by a captain and when recommendations are made orally, they are not acted upon without an independent investigation by a chief. Consequently, the Board must conclude that captains do not have the authority to effectively recommend the hiring or transferring of fire fighters.

The captains have little involvement in the promotional process. Fire fighters wanting promotion must apply, take a written exam, and go before a citizen committee. This committee makes a recommendation to the mayor who has the authority to make the final decision. The only possible input captains have in such matters consists of evaluation reports by which captains periodically evaluate the fire fighter's performance. These evaluations are always reviewed by an assistant chief before being passed on to the chief. Further, there is no evidence that such evaluations are even considered by the promotion board; therefore, it is not clear whether such evaluations ever become a part of the promotional process. Consequently, the Board must conclude that captains have no authority to effectively recommend the promotion of fire fighters.

The captain's authority to discipline is generally limited to verbal reprimands. If the reprimand goes unheeded the captain informs the assistant chief who is always available by telephone. The record shows that although captains have the authority to issue written reprimands, they rarely do so. Captains have no authority to discharge or suspend an employee for serious discipline problems. In no case would a severe disciplinary measure be levied without an independent investigation of the surrounding circumstances by a chief. Consequently, the Board must conclude that although a captain has some authority to recommend the discipline of employees, it is of such routine nature that it cannot be considered sufficient to give captains supervisory status.

2. The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters. With respect to the direction of fire fighters, it is evident that a captain is in charge while at the engine house or fire scene when a chief is not present. However, merely being in charge is not enough to constitute having the authority to direct the work force. The responsibility must be substantial enough to make the employee a part of management, not simply a leadsman or strawboss. Also, authority to direct can be so proceduralized that it becomes routine without involving the exercise of independent judgment. Therefore, the question to be addressed is whether the captain's direction of the fire fighters involves the use of independent judgment and whether the captain's responsibility is substantial enough to make them a part of management.

In each of the functions carried out by the captains an attempt has been made to standardize the procedures used in carrying out his duties. The training is highly standardized in that captains must strictly adhere to a schedule established by the chiefs, leaving almost no room for independent judgment. Housekeeping duties are also established by the chiefs. The captains do not assign a fire fighter to a particular task. Instead the fire fighters decide among themselves who will be responsible for a certain job and that person will complete the chore with little supervision. The jobs are routine in nature and the captain's supervisory duties consist of merely seeing that the job is done correctly. Clearly, the department operates under very standardized procedures in both housekeeping and training matters. Therefore, we must conclude that the amount of independent judgment exercised by the captains in such matters is insufficient to ascribe supervisory status to the captains.

The captains have some authority to direct and assign the work force while fighting fires. A captain is usually in charge at small non-structural fires. Also at a structural fire a captain will be in charge of the fire fighters until a chief arrives. The record shows that the captain's authority to direct and assign the fire fighters at

structural fires is only temporary in that an assistant chief or chief is present at all structural fires. If a captain arrives at a structural fire before a chief, he must decide what equipment to use to extinguish the fire. This decision is obviously an important one; however, it is also a routine tactical decision in that the captain, as well as most other experienced fire fighters, knows from training and experience the decisions that must be made. The record shows that the fire fighters require few specific orders from the captain. Instead, the fire fighters present are usually experienced and carry out their duties without direction. In view of this evidence the Board must conclude that the captains authority to direct and assign fire fighters while fighting a fire is not sufficient to find captains to be supervisors. Although the captain's role in fire fighting is a very important one, and requires extensive training and skill, his leadership role rests on his skill and experience rather than on a need for the captain to be in a position to carry out the city's labor policy. Therefore, we must conclude that the captain's authority to direct and assign the work force is more akin to the authority of a leadsman or strawboss and not that of a supervisor.

3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees. Captains located at Engine Houses Two, Three and Four normally are in charge of two fire fighters. A captain stationed at Engine House One supervises four to five fire fighters. During each shift an assistant chief located at Engine House One oversees the entire operation. The assistant chief exercises much greater authority over the fire fighters than do the captains. The assistant chief either personally observes the fire fighters or stays in close contact by telephone. Consequently, we must conclude that the small number of employees the captains oversee and the concurrent authority exercised by the assistant chief over the fire fighters militates against finding that the captains are true supervisors.

4. The level of pay including a valuation of whether the supervisor is paid for his skill or for his supervision of employees. The only evidence introduced into the record concerning the captain's pay scale is department pay schedule which sets forth a 13-range pay scale. A captain receives roughly 15% more than a fire fighter on the same pay range. There is some overlap in the pay scales; that is, a fire fighter that has advanced to the seventh pay range receives the same pay as a captain in range one. There is no evidence that this small difference of pay is compensation for the captain's supervision of employees. Consequently, the rate of pay received by the captains does not convince the Board that the captains are supervisors.

5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees. The record clearly indicates that captains are basically responsible for supervising specific activities--i.e., fire fighting, house cleaning duties, training--and are not primarily involved in supervising employees.

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees. The captains are required to do housekeeping chores along with the fire fighters and the record shows that they do in fact work in completing such chores. Also, the captains must work along side the fire fighters during a fire, handling the fire hose or doing whatever necessary to extinguish the fire. Consequently, captains clearly must be considered working supervisors because they spend little time in supervising the fire fighters without also working.

Upon a careful review of the foregoing factors, we must conclude that the captains do not possess the authority to be considered supervisors. Captains cannot effectively recommend the hiring, transfer or promotion of employees. Their authority to discipline is limited. Captains are in charge of only a small number of fire fighters and are more involved with supervising activities rather than employees. Further, it is clear that the captains most often work in conjunction with the fire fighters in all activities. Although captains have some authority to direct and assign the work force, they rarely

exercise independent judgment or discretion. Instead they must follow routinized procedures established by the true supervisors--the chief and assistant chiefs. Consequently, the Board must conclude that the captain's position is analogous to that of a leadsman or strawboss and not that of a supervisor.

DECISION AND DIRECTION OF ELECTION

DECISION

It is the decision of the State Board of Mediation that an appropriate unit of Fire Department employees of the City of St. Charles is as follows:

All fire fighters, paramedics and captains, but excluding the fire chief and assistant chiefs.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than sixty (60) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period, because they were out ill or on vacation. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by ST. CHARLES PROFESSIONAL FIRE FIGHTERS, LOCAL #1921, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS.

It is hereby ordered that the respondent shall submit to the Chairman of the State Board of Mediation, as well as to the petitioner, within seven days from the date of receipt of this decision, an alphabetical list of the employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Entered this 13th day of November, 1979.

(S E A L)

STATE BOARD OF MEDIATION

/s/ Conrad L. Berry
Conrad L. Berry, Chairman

/s/ Stanley Cox
Stanley Cox, Employer Member

/s/ Robert Missey
Robert Missey, Employee Member